

(3) Looking at s 9 of the Act, it can be amply deduced that Parliament intended to assimilate the position and status of a society to that of a natural person having the capacity to sue or be sued either in tort or in contract. There was no provision restricting or limiting the category or type of action a society can pursue. In the absence of such provision, the court was not to import any notion that may result in the deprivation of legal right or remedy that would otherwise be available to an individual or group of individuals, such as a union, association or society (see pp 362I–363B).

- (4) A society had a name and reputation. The reputation of the society must be deemed to be the reputation of the members collectively as activities and objectives of the society were achieved through its members. Any payment of damages could be made to the society as s 9(a) and (b) of the Act enabled a society to hold movable and immovable properties (see p 362C–D, E–F).

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[Bahasa Malaysia summary]

Plaintif dalam kes ini merupakan Persatuan Dewan Perniagaan dan Perindustrian Tiong Hua Johor Bahru ('persatuan tersebut') dan tuntutan terhadap defendan adalah untuk fitnah. Defendan didakwa melalui pegawai am persatuan tersebut. Isu-isu yang ditimbulkan di sini adalah: (a) sama ada plaintif dalam keupayaan yang dinyatakan dalam writ mempunyai locus standi untuk memulakan tindakan ini; dan (b) sekiranya jawapan kepada (a) adalah 'ya', sama ada plaintif sebagai sebuah persatuan mempunyai personaliti dan reputasi yang boleh difitnah.

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Diputuskan:

- (1) Kedua-dua s 9(c) Akta Pertubuhan 1966 ('Akta tersebut') dan s 35(b) Akta Pertubuhan Singapura digubal oleh Parlimen negara masing-masing dengan objektif mengurnia dan memberi sebuah persatuan yang didaftarkan di bawah Akta tersebut dengan sifat dan keupayaan sah. Perbezaan dalam tafsiran dan sistem ungkapan yang digunakan dalam dua peruntukan itu adalah satu perkara pendekatan dan gaya yang diterimapakai oleh penggubal individu (lihat ms 360E–F).
- (2) Bacaan terus s 9(c) Akta tersebut menunjukkan bahawa sebuah persatuan yang didaftar di bawah Akta tersebut hanya boleh mendakwa dan didakwa menerusi pegawai am atau pemegang jawatan. Rasional mekanisme ini adalah untuk memudahkan proses perundangan oleh atau terhadap persatuan tersebut. Hasrat Parlimen kita untuk mengurnia platform sah untuk sesebuah persatuan mendakwa atau didakwa adalah jelas dan tidak samar-samar. Justeru itu, plaintif sebagai seorang pegawai am persatuan tersebut jelas mempunyai keupayaan untuk mewakili persatuan tersebut dalam tindakan ini (lihat ms 360G, 361C–D).
- (3) Berdasarkan s 9 Akta tersebut, ia boleh disimpulkan bahawa Parlimen berhasrat mengasimilasi kedudukan dan taraf sebuah syarikat kepada satu orang biasa yang mempunyai keupayaan untuk mendakwa atau didakwa sama ada dalam tort atau dalam kontrak. Tiada peruntukan yang menghad kategori atau jenis tindakan yang boleh diguna oleh sebuah syarikat. Dalam ketiadaan peruntukan sedemikian, mahkamah tidak boleh mengimport sebarang ikhtiar yang boleh mengakibatkan dalam perlucutan hak

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- A undang-undang atau remedi yang sebaliknya boleh diguna oleh seorang individu atau sekumpulan individu seperti kesatuan, pertubuhan atau golongan (lihat ms 362I–363B).
- B (4) Sesebuah persatuan mempunyai nama dan reputasi. Reputasi persatuan mestilah dianggap sebagai reputasi ahli-ahli secara berkumpulan kerana kegiatan dan objektif persatuan dicapai melalui ahli-ahlinya. Sebarang bayaran ganti rugi boleh dibuat kepada persatuan tersebut kerana s 9(a) dan (b) Akta tersebut membolehkan sesebuah persatuan memegang harta boleh alih dan tidak alih (lihat ms 362C–D, E–F).]

C Notes

For cases on suits in societies, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2177.

D Cases referred to

Atip bin Ali v Josephine Doris Nunis & Anor [1987] 1 MLJ 82 (distd)
Knupffer v London Express Ltd [1944] 1 All ER 495 (refd)
National Union of General and Municipal Workers v Gillian & Ors [1945] KB (refd)
Sussex (Peerage) case (1844) II Cl & Fin 85 (refd)

E Legislation referred to

Societies Act 1966 ss 9(a), (b), (c), (d), (e)(i), (ii)
 Societies Act [Sing] s 35(b)

- F **Azhar J:** On the given facts and circumstances of this case, two main issues have to be determined for the purpose of the present appeal. They are: (i) whether the plaintiff in the capacity stated in the writ has a locus standi to institute the present action; and (ii) if the answer to issue (i) is in the affirmative, whether the plaintiff as a society has a personality and reputation capable of being defamed.

- G On the first issue, it was argued for the defendants that notwithstanding s 9(c) of the Societies Act 1966, the plaintiff Ng Yeow Song suing as public officer of Dewan Perniagaan dan Perindustrian Tiong Hua Johor Bahru ('DPPTHJB') did not have any standing to take out this writ of summons on the ground that DPPTHJB itself did not have any legal entity under the law. As such DPPTHJB did not have any locus standi to institute the present action. In support of this contention, counsel drew this court's attention to a decision by Syed Ahmad Helmy JC in one other case involving the same parties and the same issue of locus standi arose for consideration, where the said judicial commissioner in allowing the defendants' application to have the plaintiff's suit struck out had this to say:

From the definition aforesaid coupled with the phraseology used in s 9(c), the irrefutable conclusion that a society is not a legal entity itself, distinct from its

members cannot be resisted or avoided and on that score alone, I do not see how the plaintiff can salvage its position and prevent the defendants from summarily striking out its claim.

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Apparently, the learned judicial commissioner had taken the above position and arrived at the conclusion after making comparison of s 9(c) of the Societies Act 1966 with s 35(b) of the Societies Act of Singapore.

B

Section 9(c) reads:

A society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office bearer of the society.

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On s 35(b), the learned judicial commissioner had this to say:

The most striking difference was the presence of s 35(b) in the Singapore Societies Act which specifically provides that a society may sue or be sued in the name in which it was registered ... the wording of s 35(b) makes specific reference to the society as a personality which is unlike our s 9(c) where a society cannot sue or be sued in its name — it can only sue or be sued through the mechanism of the public office bearer.

D

From the above passages, clearly the learned judicial commissioner had come to the conclusion that whilst s 35(b) had conferred a legal entity on society registered under the Singapore Act, s 9(c) had failed to achieve that objective. In other word, s 9(c) is ineffective and its existence in the Act is of no significance. With respect, I do not agree. It is as clear as night and day that both s 9(c) and s 35(b) were enacted by the Parliaments of the respective countries with the objective of conferring and clothing a society registered under their respective statutes with legal entity and capacity. The difference in the construction and phraseology used in the two provisions, to my mind, is a matter of approach and style adopted by the individual draftsman. One draftsman might say 'a cow has four legs' while another will say 'a cow is a four legged animal'. It means one and the same thing.

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A straight reading of s 9(c) will show clearly that a society registered under the Act can only sue or be sued through its public officer or office bearer. The rationale behind this kind of mechanism is obvious, ie to facilitate legal process by or against the society. The intention of our Parliament to confer a legal platform for a society to stand to sue or be sued is clear and unambiguous.

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One of the cardinal rules of interpretation of statutes, which is oftentimes referred to as the golden rule, is that the grammatical and ordinary sense of the words used by the legislature in expressing its intention is to be adhered to. The court is bound to construe a section according to the plain meaning of the language used. A statue should be interpreted according to what it says and not what it ought to have said.

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In the *Sussex (Peerage) case* (1844) II Cl & Fin 85, Tindal CJ said:

A If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense ... but if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting that intention to call in aid the ground and cause of the making of the statute.

B In *Maxwell's Interpretation of Statutes*, it is stated as follows:

The underlying principle is that the meaning and intention of statute must be collected from the plain and unambiguous expression used therein rather than from any notion which may be entertained by the courts, as to what is just and expedient ...

C With the above mentioned principles and statements and a straight reading of s 9(c) it is not difficult to ascertain what the intention of the legislature is in enacting that provision. The provision must be read generously and purposively so as to give effect to that intention.

D Section 9(c) has clearly provided a platform for a registered society to stand legally by its public officer to sue or be sued in a civil action. The plaintiff in the present case as a public officer of DPPTHJB clearly has the capacity to represent the society in this action.

E I shall now move on to the second issue. Counsel for the plaintiff in his submission canvassed that a registered society has a reputation capable of being defamed. Counsel referred this court to an English case of *National Union of General and Municipal Workers v Gillian & Ors* (1945) KB where it was decided, inter alia, that since a trade union could sue for tort, and there being no reason to exclude an action for defamation, the union was entitled to claim for libel affecting its functions and business as a trade union.

F It was also submitted that since a society is liable to pay for damages and costs for any wrong committed by the society to any other person, there is no reason that the society is estopped from suing any person for doing tortious acts against it. This tortious act should also by implication include libelous acts and defamation.

G Counsel for the defendant in his submission argued that the plaintiff in its statement of claim had only prayed for a single remedy, ie damages. In this regard counsel contended that this kind of remedy could only be asked for in a personal action and not a representative action. This court's attention was drawn to the case of *Arip bin Ali v Josephine Doris Numis & Anor* [1987] 1 MLJ 82 and *Knupffer v London Express Ltd* [1944] 1 All ER 495.

H In determining the issue at hand, it is useful and of great relevance to note that the legislature in enacting the Societies Act 1966 has quite extensively accorded legal capacity to a registered society to enable it to function and carry out the objective and purpose of its existence. Section 9(a) and (b) talk about the manner and mechanism of holding properties both moveable and immovable by a society. Section 9(c) and (d) provide a society with a legal standing and mechanism for it to stand before the court of law either to sue or be sued. Lastly, s 9(e)(i) and (ii) tell us how a judgment against a society is to be executed. Thus, from this provision, it

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can be amply deducted that it is the intention of Parliament to assimilate the position and status of a society to that of a natural person having the capacity to sue or be sued either in tort or in contract. Apparently, there is no provision that can be considered as having the effect of restricting or limiting the category or type of action a society can pursue. In the absence of such provision the court is not to import any notion that may result in deprivation of legal right or remedy that would otherwise be available to an individual or group of individuals such as a union, association or society.

It is to be remembered that the law enables a society to pursue its objective and carry out activities for and on behalf of its members who collectively constitute the body of the society. It is not quite correct to say that a society is a faceless creature. Collectively, it has a name and reputation.

The reputation of a society must be deemed to be the reputation of its members collectively, as activities and objectives of the society are achieved through its members.

Counsel for the defendants referred the court to *Atip bin Ali* in support of this proposition that a claim for damages in a defamation suit could only be brought by way of a personal action. With respect, there was a misconception on the counsel's part. *Atip bin Ali* was an action by one individual claiming to represent other members of a political party alleged to have been disparaged by the action of the defendant against another member, ie Datuk Seri Abdul Rahim Tamby Chik.

Whereas in our case here, the plaintiff was the society itself who claimed to have been defamed by the defendants. As the law requires, it has to sue through its public officer. If there has to be any payment of damages to the plaintiff, such payment could be made to the society. I can think of no logical reason for the defendants' counsel's proposition that a society was not in a position to receive damages, after all, s 9(a) and (b) enable a society to hold properties both movable and immovable. There is no legal justification to compel a society to be contented only with a tender of apology by the party found guilty of defaming it. A society too can receive monetary award of damages in respect of defamation committed against it.

For all the reasons stated above, it is my finding that the plaintiff's claim has to be restored as there are triable issues that merit the plaintiff's claim to go on a full trial. Costs in the cause.

Order accordingly.

Reported by Lim Lee Na